

Exhibit A

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

COVER SHEET

Plaintiff(s)	
RAFAEL ESPINOZA	
Case Number :	
Type of pleading :	
Complaint	
Code and Classification :	011
Filed on behalf of	
PLAINTIFF RAFAEL ESPINOZA	
Defendant(s)	
ATLAS RAILROAD CONSTRUCTION, LLC and GENESEE & WYOMING, INC.	
Vs	
(Name of the filing party)	
<input checked="" type="checkbox"/> Counsel of Record	
<input type="checkbox"/> Individual, If Pro Se	
Name, Address and Telephone Number :	
R. Andrew Santillo, Esq. Winebrake & Santillo, LLC 715 Twining Road, Suite 211 Dresher, PA 19025 215-884-2491	
Attorney's State ID :	93041
Attorney's Firm ID :	

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RAFAEL ESPINOZA,

Plaintiff,

v.

ATLAS RAILROAD CONSTRUCTION, LLC
and GENESEE & WYOMING, INC.,

Defendants.

CIVIL DIVISION

No. GD _____

CLASS ACTION COMPLAINT

FILED ELECTRONICALLY

Filed on behalf of Plaintiff and Class
Members

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A
LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE
TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL
SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
736 SEVENTH AVENUE - 400 KOPPERS BUILDING
PITTSBURGH, PA 15219
(412) 261-0518 - (412) 465-3955

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RAFAEL ESPINOZA,

Plaintiff,

v.

ATLAS RAILROAD CONSTRUCTION, LLC
and GENESEE & WYOMING, INC.,

Defendants.

CIVIL DIVISION

No. GD _____

CLASS ACTION COMPLAINT

FILED ELECTRONICALLY

Filed on behalf of Plaintiff and Class
Members - Non-Jury Trial

CLASS ACTION COMPLAINT

Plaintiff Rafael Espinoza (“Plaintiff”) brings this class action lawsuit against Defendants Atlas Railroad Construction, LLC and Genesee & Wyoming, Inc. (collectively “Defendants”), seeking all available relief under the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, et seq.

PARTIES

1. Plaintiff resides at 909 Brandon Drive, Chambersburg, PA 17201.
2. Defendant Atlas Railroad Construction, LLC (“Atlas”) is registered to do business in Pennsylvania and, upon information and belief, headquartered at 13901 Sutton Park Drive South, Jacksonville, FL 32224.
3. Defendant Genesee & Wyoming, Inc. (“G&W”) is the parent company of Atlas and maintains “Operations Headquarters” at 13901 Sutton Park Drive South, Jacksonville, FL 32224.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendants.
5. Venue in this Court is proper under Pennsylvania Rules of Civil Procedure 1006

and 2179 because, *inter alia*, Defendants regularly conduct business in Allegheny County. For example, Atlas has maintained an office in Allegheny County located at 1370 Washington Pike, Bridgeville, Pennsylvania during the relevant time period.

FACTS

6. Atlas provides railroad construction and maintenance services at projects located throughout the United States including, *inter alia*, Mississippi, Florida, Pennsylvania, Georgia, Tennessee, Illinois, Wisconsin and North Carolina.

7. Defendants have employed Pennsylvania residents who perform manual labor as part of these railroad construction and maintenance projects. These workers are referred to herein as “Railroad Workers.”

8. Defendants expect their Railroad Workers to travel from their residences in Pennsylvania to their assigned projects regardless of location.

9. Railroad Workers are paid an hourly wage for hours in which they perform manual labor at the site of their assigned projects.

10. However, Defendants did not pay Railroad Workers for time spent traveling from: (i) their residences in Pennsylvania to their assigned project location; (ii) one assigned project location to another assigned project location; and (iii) an assigned project location back to their residences in Pennsylvania.

11. Railroad Workers frequently work over 40 hours in a week.

12. Plaintiff was employed by Defendants as a Railroad Worker from approximately June 2014 until approximately April 2015

13. During his employment, Plaintiff regularly worked over 40 hours in a week.

14. As a Railroad Worker, Plaintiff was paid in accordance with Defendants’ policies

described in paragraphs 8 to 10 supra and not paid for his travel time.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this lawsuit as a class action on behalf of himself and all individuals who, during any time since July 30, 2012: (i) were employed by Defendants as Railroad Workers; (ii) resided in Pennsylvania; and (iii) were not covered by the settlement of the litigation titled Gary Braucher, et. al v. Atlas Railroad Construction, LLC, 5:14-cv-1601-BYP (N.D. Ohio).

16. This action is properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

17. The class is so numerous that joinder of all individual members is impracticable.

18. Defendants' conduct with respect to Plaintiff and the class raises questions of law and fact that are common to the entire class.

19. Plaintiff's claims and Defendants' anticipated defenses are typical of the claims or defenses applicable to the entire class.

20. Plaintiff's interests in pursuing this lawsuit are aligned with the interests of the entire class.

21. Plaintiff will fairly and adequately protect class members' interests because he and his experienced and well-financed counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the entire class.

22. A class action provides the fairest and most efficient method for adjudicating the legal claims of all class members.

COUNT I

23. All previous paragraphs are incorporated as though fully set forth herein.

24. Defendants are employers covered by the PMWA's overtime pay mandates, and Plaintiff and the class members are employees entitled to the PMWA's protections.

25. The PMWA requires Defendants to pay Plaintiff and other class members compensation for every hour worked in a workweek. *See* 43 P.S. § 333.104(a).

26. The PMWA requires Defendants to pay Plaintiff and other class members overtime premium compensation "not less than one and one-half times" the regular pay rate for all hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

27. Defendants violated the PMWA by failing to pay Plaintiff and the Class for all hours worked¹ and, where applicable, failing to pay overtime premium compensation for such hours.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the class, seeks the following relief:

- A. Unpaid overtime wages to the fullest extent permitted under the law;
- B. Prejudgment interest to the fullest extent permitted under the law;
- C. Litigation costs, expenses, and attorney's fees to the fullest extent permitted under the law;
- D. Such other and further relief as this Court deems just and proper; and
- E. The damages sought are in excess of Arbitration limits.

Date: July 30, 2015

Respectfully,

/s/ R. Andrew Santillo
Peter Winebrake, Esq. (PA Attorney No. 80496)
R. Andrew Santillo, Esq. (PA Attorney No. 93041)
Mark J. Gottesfeld, Esq. (PA Attorney No. 307752)
Winebrake & Santillo, LLC

¹ Plaintiff does not assert minimum wage violations under the PMWA against Defendant.

715 Twining Road, Suite 211
Dresher, PA 19025

Steven B. Barrett, Esq.
Hamburg, Rubin, Mullin, Maxwell & Lupin, LLC
375 Morris Road
Lansdale, PA 19446-0773

For Plaintiff and the Putative Class

VERIFICATION

I, RAFAEL ESPINOZA, hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the foregoing Class Action Complaint are true and correct to the best of my knowledge information and belief; and
3. I understand that the statements in the Class Action Complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 7-23-15

Rafael Espinoza
Signature

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

COMMON PLEAS

RAFAEL ESPINOZA

Plaintiff,

Court File Number
GD-15-013137

v.

ATLAS RAILROAD CONSTRUCTION, LLC, et al.
Defendant,

AFFIDAVIT OF SERVICE

State of Florida } SS
County of Duval }

Richard Peterson _____, being duly sworn, on oath says that on
(Name of Server)

8/12 /2015 at 12:51P M
(Date of Service) (Time of Service)

s/he served the: Notice to Defend and Class Action Complaint
upon: Genesee & Wyoming, Inc.

therein named, personally at: 13901 Sutton Park Drive South
Jacksonville, FL 32224

by handing to and leaving with:

the Registered Agent of Genesee & Wyoming, Inc.
 an Officer of Genesee & Wyoming, Inc.
 a Managing Agent, someone within Genesee & Wyoming, Inc. whose management capacity
 is such that (s)he exercises independent judgment and discretion

Sophie Shrdiacowski
(Name of the Person with whom the documents were left)

office manager
(Title or Relationship)

a true and correct copy thereof.

Subscribed and Sworn to before me

8/13 /2015. # 1074
(Signature of Server)

Christine K. Newman
(Signature of Notary)



Serial # WINSA 155739 1353

Re: GD-15-013137



* Service was completed by an independent contractor retained by Metro Legal Services, Inc.

Metro Legal Services, Inc.
330 2nd Avenue South, Suite 150, Minneapolis, MN 55401
T (612) 332-0202 or (800) 488-8994

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

COMMON PLEAS

RAFAEL ESPINOZA

Plaintiff,

Court File Number
GD-15-013137

v.

ATLAS RAILROAD CONSTRUCTION, LLC, et al.
Defendant,

AFFIDAVIT OF SERVICE

State of Florida } SS
County of Duval }

Richard Peterson _____, being duly sworn, on oath says that on
(Name of Server)

8/12 /2015 at 12:58 P M
(Date of Service) (Time of Service)

s/he served the: Notice to Defend and Class Action Complaint

upon: Atlas Railroad Construction, LLC

therein named, personally at: 13901 Sutton Park Drive South
Jacksonville, FL 32224

by handing to and leaving with:

[] the Registered Agent of Atlas Railroad Construction, LLC
[] an Officer of Atlas Railroad Construction, LLC
[] a Managing Agent, someone within Atlas Railroad Construction, LLC whose management
capacity is such that (s)he exercises independent judgment and discretion

Hyde Baker
(Name of the Person with whom the documents were left)

Manager of Structures
(Title or Relationship)

a true and correct copy thereof.

Subscribed and Sworn to before me

#1074

(Signature of Server)

8/13/2015

Christine K. Newman
(Signature of Notary)



Serial # WINSA 155738 1352

Re: GD-15-013137

* Service was completed by an independent contractor retained by Metro Legal Services, Inc.



Metro Legal Services, Inc.
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T (612) 332-0202 or (800) 488-8994

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RAFAEL ESPINOZA,

CIVIL DIVISION

Plaintiff,

v.

Case No.: GD-15-013137

ATLAS RAILROAD CONSTRUCTION,
LLC and GENESEE & WYOMING, INC.,

Defendants.

**STIPULATION FOR EXTENSION OF
TIME TO RESPOND TO COMPLAINT**

Code ____

CLASS ACTION

Filed on behalf of Defendants,
Atlas Railroad Construction, LLC and
Genesee & Wyoming, Inc.

Counsel of Record for this Party:

Karen Gal-Or (Pa. I.D. 317258)
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Facsimile: (412) 394-7959
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Stan Weiner (*pro hac vice* forthcoming)
Corey Clay (*pro hac vice* forthcoming)
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RAFAEL ESPINOZA,

Plaintiff,

v.

Case No.: GD-15-013137

**ATLAS RAILROAD
CONSTRUCTION, LLC and
GENESEE & WYOMING, INC.,**

Defendants.

STIPULATION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT

Plaintiff Rafael Espinoza and Defendants Atlas Railroad Construction, LLC and Genesee & Wyoming, Inc. have agreed that Defendants may have an additional thirty (30) days to answer or otherwise respond to Plaintiff's Complaint, to and through October 1, 2015.

Dated: August 26, 2015.

Respectfully submitted,

Respectfully submitted,

/s/ Peter Winebrake

Peter Winebrake (Pa. I.D. 80496)
R. Andrew Santillo (Pa. I.D. 93041)
Mark J. Gottesfeld (Pa. I.D. 307752)
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Lansdale, PA 19446-0773

Counsel for Plaintiff:
Rafael Espinoza

/s/ Karen Gal-Or

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Corey Clay (*pro hac vice* forthcoming)
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Facsimile: (216) 579-0212
sweiner@jonesday.com
cclay@jonesday.com

Counsel for Defendants:
Atlas Railroad Construction, LLC and
Genesee & Wyoming, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August 2015, a copy of the Stipulation for Extension of Time to Respond to Complaint was served via U.S. First-Class Mail, postage prepaid on the following:

R. Andrew Santillo, Esq.
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

/s/ Karen Gal-Or

Counsel for Defendants
Atlas Railroad Construction, LLC and Genesee
& Wyoming, Inc.